

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEBORAH S. GONZALEZ and DEPARTMENT OF DEFENSE,
FT. MEYER COMMISSARY, Ft. Meyer, Va.

*Docket No. 97-333; Submitted on the Record;
Issued November 17, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's claim for continuation of pay on the grounds that she failed to give written notice of her injury within 30 days of its occurrence as specified by the Federal Employees' Compensation Act.¹

Appellant, a 35-year-old store worker, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) on June 13, 1996² alleging that she injured her lower lumbar, muscles and ligaments when she lifted something heavy on February 11, 1996 while in the course of employment.³ The Office accepted appellant's claim for a lumbar sprain on June 18, 1996.

By letter decision dated September 13, 1996, the Office determined that appellant was not entitled to continuation of pay during her absence from work due to her February 12, 1996⁴ employment injury because notice of her claim was provided on March 19, 1996 which was more than 30 days after the date of the injury. The Office noted that appellant could submit a claim for wage loss by filing a form CA-7.

The Board finds that the Office properly denied continuation of pay on the grounds that appellant failed to give written notice of her injury within 30 days.

¹ 5 U.S.C. §§ 8101-8193.

² Appellant erroneously noted the date of the notice as March 13, 1961, her birth date.

³ On the back of the form, the employing establishment noted that the notice was received on March 19, 1996.

⁴ The Office erroneously noted the date as February 12, 1996. Appellant had initially put the date February 12, 1996, but crossed the date out and indicated the date as February 11, 1996.

Section 8118 of the Act⁵ authorizes the continuation of pay of an employee “who has filed a claim for a period of wage loss due to traumatic injury with his immediate supervisor on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this Title.”⁶ The context of section 8122 makes clear that this means within 30 days of the date of the injury.⁵ Section 10.201(a) of the implementing federal regulations⁶ provides in pertinent part: “An employee is not entitled to continuation of pay unless: *** (3) The employee files a claim for a period of wage loss, as required by 5 U.S.C. § 8118(a), within 30 days of the injury on a form approved by the Secretary. (Form CA-1 may be used for this purpose).” Therefore, to be entitled to continuation of pay, an employee must file a claim on an appropriate form within 30 days after the injury.⁷

The Board finds that appellant failed to give written notice of her injury within 30 days of its occurrence and that, therefore, the Office properly denied continuation of pay. Appellant first gave the Office written notice of her February 11, 1996 employment injury on March 19, 1996. As appellant did not file her claim for continuation of pay until March 19, 1996 which is more than 30 days after February 11, 1996 employment injury, such a claim is untimely.⁸

The decision of the Office of Workers’ Compensation Programs dated September 13, 1996 is hereby affirmed.

Dated, Washington, D.C.
November 17, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member

⁵ 5 U.S.C. § 8118.

⁶ 5 U.S.C. § 8122(a)(2).

⁷ *Myra Lenburg*, 36 ECAB 487 (1985); *George A. Harrell*, 29 ECAB 338 (1978); *see* 20 C.F.R. § 10.201(a)(3).

⁸ The Board notes that the record contains a January 8, 1997 Office decision denying appellant’s request for a review of the written record by an Office hearing representative. This decision was issued while the Board had jurisdiction over the case, and therefore it is null and void. *See Arlonia B. Taylor*, 44 ECAB 591 (1993).